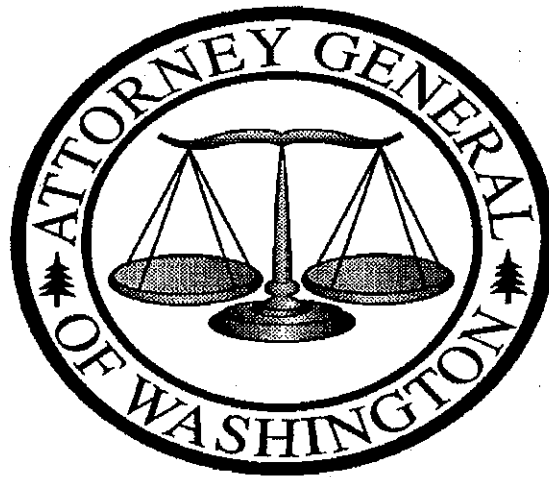


GARNISHMENT
& OTHER WITHHOLDING
DOCUMENTS:
PROCESSING PROCEDURES



MANUAL

TRAINING PRESENTED BY
THE OFFICE OF THE ATTORNEY GENERAL
AUGUST 2008

RESOURCES

for

GARNISHMENT and OTHER WITHHOLDING ISSUES

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OFFICE OF THE ATTORNEY GENERAL

GARNISHMENT TRAINING

Garnishments and Other Related Legal Documents¹

I. OVERVIEW

The term garnishment and levy are often used interchangeably to mean the act of seizing property to satisfy a creditor's debt. A creditor uses a garnishment or levy to seize personal property in the possession of a state agency. The personal property can include, but is not limited to, wages, sick leave or annual leave buyout, vendor payments, commissions, bonuses, prize money. Personal property can also include equipment or any other asset of value.

Various legal documents are used to seize personal property for the benefit of a creditor. The types of documents can be classified into three categories: (1) writs of garnishment; (2) administrative orders (also generally called levies); and (3) assignments. Garnishments generally include writs of garnishment (continuing lien) and writs of garnishment (non-continuing lien). Administrative orders include any notice or order from a state, federal, or quasi-federal agency requiring the employer to withhold personal property for the benefit of the creditor. This would include mandatory payroll deductions, tax levies, notices and orders to withhold and deliver, and educational loan levies. Assignments, on the other hand, involve the voluntary or mandatory assignment of an employee's wages to a creditor.

Before processing a garnishment or levy, you must first determine the type of legal document received by your agency. The legal document will determine the procedure to follow. Because each document implicates different statutory procedures and rights, take time to identify the

¹ This Outline was prepared by the Assistant Attorney General formerly assigned to garnishment issues. This Outline is provided as a general overview of garnishments and other legal documents used to capture an employee's earnings or some other asset being held by a state agency. It is not intended to be an exhaustive treatise on the subject. Nor should this document be used by an agency to give its employees legal advice. Any questions should be directed to the garnishment coordinator at the Office of the Attorney General.

document. You will find that the most common legal documents used by creditors are the writ of garnishment (continuing lien on earnings), the IRS tax levy, the notice and order to withhold and deliver, and the mandatory payroll deduction.

A. Writs of Garnishment

To collect a debt, a commercial creditor must first obtain a judgment in a court of law. A judgment is a court order decreeing that a debtor (called the defendant) owes the creditor (called the plaintiff) a sum of money. The judgment is recorded in the court's judgment docket for the purpose of providing notice to the public that the debt is owed. If the debtor fails to pay the debt, a creditor may seek a court order seizing money in the hands of a third party. The court order allowing the seizure of money is called a writ of garnishment.

The law provides for two types of writs of garnishment. The first is titled a "writ of garnishment (continuing lien on wages)." The second is titled a "writ of garnishment (non-continuing lien)" or a "writ of garnishment (debt other than earnings—after judgment)." A continuing lien writ captures a percentage of the employee's wages for a 60 calendar day period. The non-continuing writ captures any non-exempt personal property owed to the employee only on the date the writ is received. The non-continuing writ is most commonly used to capture contractual payments owed to a business.

B. Administrative Orders

Administrative orders are generally any document generated by a state, a federal, or a quasi-federal agency that requires the withholding of earnings. These are sometimes referred to as a levy. A number of state agencies use a document called a Notice and Order to Withhold and Deliver. RCW 82.32.235 (business and occupation tax as well as sales tax); 51.32.240 (workmen's compensation overpayment); 51.48.150 (workmen's compensation taxes); 50.24.070 (unemployment taxes); 74.20A.080 (child support). The Internal Revenue Service uses a document titled a "Notice of Levy." The U.S. Department of Education has a document called a "Order of Withholding from Earnings." A bankruptcy trustee also uses an

administrative order titled "Trustee's Direction To Pay Debtor's Earnings to Trustee." Because administrative orders are often not subject to the rules governing writs of garnishment, it is, again, important to determine the type of document and to follow the instructions in the document.

C. Wage Assignments

A wage assignment is generally the transfer of wages from the employee (the assignor) to the creditor (the assignee). A wage assignment can be voluntary or mandatory. A voluntary wage assignment involves the employee's consent in writing to transfer future wages to a third party. A mandatory wage assignment, on the other hand, requires the transfer of wages because of a court order or statute.

An assignment implicates a particular type of legal relationship between the debtor and creditor. This legal relationship determines the rights of the parties as well as the rights of third parties that are competing for the debtor's wages. Because of this legal relationship, an assignment is not the same as a voluntary payroll deduction authorized by statute. The Legislature authorized voluntary payroll deductions for a number of matters such as insurance premiums, United Way contributions, or for union dues. These are not assignments. Assignments are identified by use of the word "assignment" and the transfer of wages from a debtor to a creditor.

II. WRIT OF GARNISHMENT (CONTINUING LIEN)

A. The Types of Writs

RCW 6.27 provides for two types of writs: (1) a writ of garnishment (continuing lien on earnings); and (2) a writ of garnishment (non-continuing lien). A writ of garnishment (continuing lien on earnings) is used by a creditor to capture the employee's non-exempt earnings over a 60 calendar day period. It is a forward looking order that seizes non-exempt earnings on the day the writ is received and for the next 60 calendar days.

A writ of garnishment (non-continuing lien), on the other hand, captures personal property in the agency's possession on the day the writ is received

by the Office of the Attorney General (AGO). It is not a forward looking order. The writ is effective for one day only. Personal property that becomes payable or comes into the possession of the agency the day after the writ is received is generally not subject to the writ.

B. Four Steps to Garnishment – Continuing Lien on Wages

A garnishment involves four basic steps. First, a writ is received by the agency from the Office of the Attorney General. Second, the agency begins the withholding process and completes a First Answer form, notifying the parties of the amount the agency expects to deduct from the employee's wages. Third, the agency receives a Second Answer form and notifies the parties of the total amount actually withheld from the employee's wages. Finally, the agency receives a Judgment on Answer and Order to Pay, which allows the agency to turn over the withheld earnings to one of the parties.

A writ of garnishment is the document that orders the agency to withhold earnings. It should identify the total amount owed by the employee (defendant) to the creditor (plaintiff) along with interest, costs and attorney fees that accrued after the judgment was registered with the court. Along with the writ should be four copies of the First Answer forms and three self-addressed stamped envelopes. The envelopes should be addressed to the court, the employee, and the creditor.

C. Receipt of the Writ of Garnishment (Continuing Lien)

1. Who Issues the Writ

The first page of the writ displays a caption identifying either a county superior court or district court of the State of Washington. This is the court in which the creditor received or registered their judgment. The first page also displays the court cause number. The cause number identifies the court file where all paperwork is placed. Every document sent to a court must contain the correct cause number.

Superior court writs are issued by a court clerk, commissioner, or judge. To issue a writ, the creditor presents the court with an "Application for Writ." The application states that the defendant owes the creditor money under a judgment and that the creditor believes the state agency is in possession of money owing to the employee. It then requests that the court issue a writ that the creditor serves on the garnishee to seize any non-exempt earnings. Upon receipt of an "Application for Writ" and a fee, the court issues the writ. This writ will have the signature. All superior court writs must contain a signature of a court employee (the court clerk, commissioner, or judge) on the last page.

District court writs, on the other hand, can be issued by the attorney for the creditor. The last page of the writ will bear the attorney's signature only. It has the same legal effect as a writ signed by a court employee.

2. Terms Used in a Writ

A writ uses a number of legal terms with which you should be familiar:

Attorney of Record - the attorney who represents the plaintiff or defendant as recorded in the court's files.

Defendant - the party that owes money to the plaintiff. This is usually the employee, but can include a party contracting with a state agency, a grantee, or a service provider.

Disposable Earnings - A calculation in which "amounts required by law to be withheld" are deducted from gross earnings. The result is disposable earnings.

Earnings - wages, salary, commission, bonus, or other compensation for personal services. It does not include travel reimbursements or other compensation for expenses incurred by the employee.

Employee Pay Period - the regular period in which the employee accrues their earnings whether weekly, bi-monthly, monthly or some other timeframe.

Exempt Amounts - the earnings that a creditor may not garnish by law. It can include grants, assistance, benefits or other monies that the Legislature specifically prohibits a creditor from garnishing for public policy reasons.

Garnishee - the state agency or employer who the creditor believes is in possession of earnings or other assets of the defendant. This is also referred to as the Garnishee Defendant.

Indebted - a debt owed by the defendant (debtor) to the plaintiff (creditor).

Judgment - the amount of money owed by the defendant (debtor) to the plaintiff (creditor)

Personal Property - personal property is often divided into two categories: (1) tangible personal property; and (2) intangible personal property. Tangible personal property includes equipment and other physical assets. It does not include real property. Intangible property includes but is not limited to money, earnings, contract payments, or promissory notes.

Plaintiff - the creditor that initiated the lawsuit and obtained a judgment against the defendant.

Processing Fee - a fee taken as compensation by the agency for the processing of the writ.

3. The Writ Must Be Served on the Office of the Attorney General

A creditor must serve a writ of garnishment on the Office of the Attorney General. RCW 6.27.04 requires that a writ of garnishment be served on the State of Washington in the same manner as a summons and complaint. Service of a summons and complaint on a state agency must be served on the Office of the Attorney General. RCW 4.92.020.

Although service on any statewide Office of the Attorney General is effective service, we prefer that all writs be directed to the following address:

Office of the Attorney General
General Services Division
P.O. Box 40100
Olympia, WA 98504-0100

All writs are processed in and distributed from this central location. They are logged into a central database for tracking purposes. This database allows the AGO to answer creditor questions and to respond quickly in the event a creditor attempts to obtain a default judgment against the agency. This database only tracks writs of garnishment and those administrative orders served on the AGO.

Please note that administrative orders and wage assignments need not be served on the AGO by law. Administrative orders and wage assignments can be served directly on the agency. It is only a *writ of garnishment* that must be served on the AGO.

If you receive a writ of garnishment directly from the creditor, return it. A sample form letter for return of the writ can be found in the Appendix.

4. A Writ Should Not Be Served on the Employee at Work

The law requires that the creditor serve the employee with a copy of the writ of garnishment as well as other related documents. RCW 6.27.130. A creditor should not, however, serve the employee with a writ at their place of employment. Although the Legislature passed a law in 1996 authorizing service of process at a place of employment, the statute was repealed the following year. Laws of 1997, ch. 380, § 1; RCW 4.28.080(6). Service of a writ of garnishment on a defendant is done by mailing the writ certified mail to the employee's last known address. RCW 6.27.130.

5. A Writ Captures Earnings on the Date of Service

A writ of garnishment (continuing lien on earnings) captures earnings in the possession of the agency on the day the writ is received and for 60 calendar days thereafter. Once the writ is served on the Office of the Attorney General, an agency is prohibited by law from paying any non-exempt earnings to the employee.

If the writ is served on the Office of the Attorney General on or near the date the employee is to be paid, an agency must take reasonable steps to stop a payment to the employee and withhold the non-exempt earnings. Receipt of a writ of garnishment after the payroll cut-off date does not excuse the agency from failing to withhold the garnished funds if the agency could have taken reasonable steps to capture the garnished funds.

6. A Writ can Terminate before the 60 Days Expires

A writ of garnishment (continuing lien) can expire before the 60 day period ends. Such circumstances include:

- collection of the writ amount in full before the 60 days expires
- termination of the employee by the agency
- dismissal or release of the garnishment by the creditor
- proof of a bankruptcy filing from the employee.

7. Stacking Writs of Garnishments

Writs of garnishment compete on a first-in-time, first-in-right basis. If two writs of garnishment are received on the same day, the first writ received captures the employee's non-exempt earnings for the first 60 calendar days. The second writ captures the employee's non-exempt earnings after the first 60 calendar day period expires. This is called stacking writs. There is no limit to the number of writs that can be stacked. The same creditor, however, cannot stack multiple writs within the 60 day period. Please refer to the additional information on stacking writs found in the First Answer section of this outline.

8. Priority of Writs

Although writs of garnishment compete on a first-in-time, first-in-right basis, a garnishment or administrative order for child support takes precedence over all other garnishments. RCW 6.27.360(2).

D. First Answer

The First Answer form has two primary parts. The first part is a series of questions that inform the creditor whether the employee is working for the agency and whether the agency has possession of any of the employee's personal property. It further asks if the agency is withholding under a prior writ. The second part tells the creditor, court, and employee the amounts the agency expects to deduct from the employee's earnings.

1. Section I - Questions In First Answer

"(A) The defendant [] was [] was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment _____; and complete section III of this answer and mail or deliver the forms as directed in the writ; ..."

This question is asking whether the person identified as the defendant was your employee on the date the writ was issued by either the court or the creditor's attorney. The issue date is the date the writ was signed by either the court or the creditor's attorney. You will find this date on the last page of the writ of garnishment (continuing lien).

In addition to employment status, the writ asks whether you possess or control *any* funds owing to the defendant that terminated his/her employment relationship with the agency. Once again, possession is determined on the date the writ was issued. If the answer to both questions is no, check the appropriate boxes, sign the writ, and mail it to the creditor, defendant, and court in the appropriate envelopes provided by the creditor.

If the defendant was never an employee of your agency, again, check the appropriate boxes and place a N/A in the spot that requests a termination date. Next, sign the writ, date it, and mail it.

Example 1 (Former Employee Terminated): (A) The defendant ☐ was ☒ was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment 7/30/08; and complete section III of this answer and mail or deliver the forms as directed in the writ;

(B) The defendant ☐ did ☒ did not maintain a financial account with garnishee; and

(C) The garnishee ☐ did ☒ did not have possession of or control over any funds, personal property, or effects of the defendant. (List all of defendant's personal property or effects in you possession or control on the bottom of the last page of this answer form or attach a schedule if necessary.

...

SECTION III: An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanied schedules, and to the best of my knowledge and belief it is true, correct, and complete.

ss/ Payroll Representative
Signature of Garnishee Defendant

August 26, 2008
Date

Example 2 (Defendant Never Employed by Agency): (A) The defendant ☐ was ☒ was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment N/A; and complete section III of this answer and mail or deliver the forms as directed in the writ; . . .

Answer remaining questions as indicated in Example 1.

Example 3 (Employee Terminated, Agency Holds Property):

(A) The defendant ☐ was ☒ was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment 7/30/08; and complete section III of this answer and mail or deliver the forms as directed in the writ;

(B) The defendant ☐ did ☒ did not maintain a financial account with garnishee; and

(C) The garnishee ☒ did ☐ did not have possession of or control over any funds, personal property, or effects of the defendant. (List all of defendant's personal property or effects in you possession or control on the bottom of the last page of this answer form or attach a schedule if necessary.

SECTION III: An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanied schedules, and to the best of my knowledge and belief it is true, correct, and complete.

ss/ Payroll Representative
Signature of Garnishee Defendant

August 26, 2008
Date

Agency is in possession of employee's earnings for last pay period as well as sick leave and annual leave buy-out.

The agency should also complete Section II of the First Answer form.

Agency should attach a schedule with an estimate of the non-exempt earnings available to the creditor. Refer to section discussing calculation of disposable wages.

Example 4 (Defendant on Administrative Leave or Some other Payroll Status): *(A) The defendant [X] was [] was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment _____; and complete section III of this answer and mail or deliver the forms as directed in the writ;*

Answer the remaining questions as indicated in Example 3. Indicate on the last page of Answer form or an attached page the employment status of the defendant and whether or not earnings may become payable during the 60 calendar days following receipt of the writ by the Office of the Attorney General.

Example 5 (Defendant is Currently Employed by Agency): *(A) The defendant [X] was [] was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment _____; and complete section III of this answer and mail or deliver the forms as directed in the writ;*

Answer remaining questions as indicated in Example 3. However, rather than listing personal property at the end of writ, complete Section II of the First Answer Form

2. Section I - Withholding Under Previous Writ

Writs of garnishment compete on a first-in-time, first-in-right basis. If two writs of garnishment are received on the same day, the first writ received captures the employee's non-exempt earnings for the first 60 calendar days. The second writ will capture the employee's non-exempt earnings after the first 60 calendar day period expires. There is no limit to the number of writs that can be stacked; an employee may have multiple writs stacked, affecting their pay for months or years to come. However, a creditor cannot stack two writs with the same court cause number.

The First Answer form asks you to identify whether you are withholding under a previously served continuing lien writ. If you are, answer the following question: "ANSWER: I am presently holding the defendant's nonexempt earnings under a previous writ served on _____ (date) that will terminate not later than _____ (date)."

Once the first writ terminates or is satisfied, begin withholding under the second writ (even if the first writ's 60 days aren't up). Because you identified the expected termination date of the first writ, the creditor will send you another set of answer forms to complete about the time the second writ begins to capture the employee's earnings.

3. Section II - Calculate the 60 Day Period

To calculate the 60 day effective period and the payroll periods subject to the Writ, begin counting 60 calendar days from the day following service on the AGO. The total "effective period" encompasses the day the writ was served, plus the following 60 calendar days.

The writ captures earnings in your possession on the date it was received by the Attorney General as well as earnings that accrue during the 60-day period. You must first determine the pay periods

affected by the writ and then calculate the percentage of non-exempt funds available to the creditor.

Note that in determining affected pay periods, you cannot withhold money from a pay period that ends AFTER the end of the 60-day effective period. The 60-day effective period must encompass the WHOLE pay period affected (if the effective period ends March 14, you CANNOT hold money from the March 1-15 payroll period).

The following four examples illustrate how pay periods are calculated:

Example 1: The writ served on January 5th.

Skip the date served and count 60 calendar days. The effective period of writ would be January 5th - March 6th. The pay periods affected would be as follows for a general government employee: December 16-31 (because money was in your possession after service of the writ); January 1-15; January 16-31; February 1-15; and February 16-28. You cannot capture any money in March because the 60 days did not encompass an entire pay period in March.

Example 2: The writ served on January 28th.

The effective period would be January 28th - March 29th. The pay periods affected would be as follows for a general government employee: January 16-31; February 1-15; February 16-28; and March 1-15. Again, you cannot capture any money for March 16-31 because the 60 days did not encompass the entire pay period.

Example 3: The writ was served June 12th.

The effective period would be June 12th - August 11th. The pay periods affected would be as follows for a general government employee: June 1-15; June 16-30; July 1-15; and July 16-31.

Example 4: The writ was served on June 16th.

The effective period would be June 16th - August 15th. The pay periods affected would be as follows for a general government employee: June 1-15,

June 16-30, July 1-15, July 16-31, and August 1-15. June 1-15 is affected because you are holding money for that pay period at the time of service of the writ; August 1-15 is affected because the 60 days encompasses the entire pay period.

Rule of Thumb: Generally, a writ received between the 1st and 9th of the month as well as the 16th and 24th of the month will capture five pay periods. This rule only applies if the agency's pay period coincides with the State pay periods of the 1st to the 15th and the 16th to the end of the month.

Disclaimer: This rule of thumb applies to payroll departments NOT using HRMS. Due to the restrictions and cutoffs dates of HRMS, the actual number of pay periods captured may be less than noted in the rule of thumb.

4. Stacking Writs By Same Creditor Prohibited

Although writs may be stacked in consecutive order by different creditors or by the same creditor under different court cause numbers, writs may not be stacked by the *same* creditor under the *same* court cause number.

Example 1: Creditor A properly serves a continuing lien writ listing your Employee as the defendant. Before the 60 day effective period expires, Creditor A serves another writ that identifies the same court cause number.

Return the writ to Creditor A. Creditor A is prohibited under RCW 6.27.360(1) from serving another writ under the same court cause number before expiration of the 60 day effective period. Contact the AGO garnishment coordinator for a form letter to use in this instance.

Example 2: Creditor A properly serves a continuing lien writ listing your Employee as the defendant. Before the 60 day effective period expires, Creditor B properly serves a continuing lien writ.

Do not return Creditor B's writ. It was properly served and will be effective after termination of Creditor A's writ. Refer to page 13 for more detailed instructions.

Example 3: Creditor A properly serves a continuing lien writ listing Your Employee as the defendant. Before the 60 days effective period expires, Creditor A properly serves another continuing lien writ listing a different court cause number.

Do not return Creditor A's second writ. Stacking of writs is only prohibited when the court cause numbers are the same. Creditor A's second writ is related to a different debt on which Creditor A obtained a judgment.

5. Section II - Calculate Non-Exempt Earnings

If the defendant (debtor) is employed by your agency, you must estimate the amount of non-exempt earnings that the plaintiff's (creditor) writ will capture. This calculation is mandated by law. Washington codified the calculation in RCW 6.27.100, .150, and .190. It is based upon the federal Consumer Credit Protection Act, 15 U.S.C. § 1671 *et seq.*, which limits the amount a creditor may garnish from an employee's earnings.

To calculate **exempt earnings**, you must subtract from gross earnings all amounts required "by law to be withheld." RCW 6.27.010(2). Amounts required by law to be withheld include federal withholding taxes, social security (OASI), Medicare, L&I (medical aid), union dues (if a mandatory deduction is required by statute) and retirement. Insurance premiums, dependant care, deferred compensation and other optional deductions are not "required by law to be withheld." The amount remaining after you deduct "amounts required by law" from gross wages is **disposable earnings**.

Seventy-five (75) percent of disposable earnings or thirty times the current federal minimum hourly wage, **whichever is larger**, is the exempt amount. This 75 percent (or thirty times) must be paid to the employee. The remaining 25 percent is subject to the writ of garnishment (continuing lien).

The thirty-times the federal minimum hourly wage sets a base amount of earnings that a creditor cannot garnish. The exempt earning amounts for the thirty times the federal minimum hourly wage are as follows: \$851.50 for monthly; \$425.75 for semi-monthly; or \$196.50 per week. These amounts are effective 7/24/08 - 7/23/09. The federal minimum wage increases on July 24th of each year.

Example 1: A creditor properly serves a writ of garnishment (continuing lien) for \$100. The employee earns \$400 semi-monthly in disposable earnings.

All earnings are exempt. The employee earns less than thirty times the federal minimum hourly wage. Answer Section II of the First Answer that all funds are exempt.

Example 2: Creditor properly serves a writ of garnishment (continuing lien) for \$100. The employee earns \$500 in disposable earnings semi-monthly.

Do both calculations. 75% of \$500 equals \$375. Under the 75% rules, \$375 is exempt. Because the exempt amount is greater using thirty times the federal minimum wage rule, \$425.75 is the exempt amount. The amount withheld for the creditor would be \$74.25 (\$500 minus \$425.75).

Note that some creditors incorrectly use the state minimum wage, instead of the federal minimum wage. The federal minimum wage is the correct hourly wage.

If the writ of garnishment (continuing lien) is for child support and the employee is not supporting a spouse or dependent child, the exempt amount is forty (40) percent of disposable earnings or thirty times the federal minimum hourly wage, whichever is larger. RCW 6.27.100. If the employee is supporting a spouse or dependent child, the exempt amount is fifty (50) percent of disposable earnings. 15

U.S.C. § 1672(a)(2)(A).² The exempt amount must be paid to the employee. The remaining non-exempt amount is subject to the writ of garnishment (continuing lien).

6. Section II - Writ Expires

A writ can expire before the end of the 60 calendar day effective period in the following cases:

- collection of the writ amount in full before the 60 days expires
- termination of the employee by the agency
- dismissal or release of the garnishment by the creditor
- proof of a bankruptcy filing from the employee.

7. Section II - Processing Fees

The law allows an agency to deduct a processing fee of \$20 for the first answer and \$10 for the second answer. RCW 6.27.095. Because federal law prohibits garnishment of the employee's exempt earnings, the processing fee may be deducted only if non-exempt funds exist to satisfy it.

Example: The employee's disposable earnings for a 60 day period are \$10,000. Under the 75%/25% rule, the creditor may garnish up to \$2,500 of the employee's earnings during the 60 days. If the creditor garnishes \$2,470, the agency may deduct the processing fee of \$20/\$10. If the amount garnished is \$2,480, the agency may deduct only a \$20 fee. If the amount garnished is \$2,500 or more, no fee may be deducted.

8. Section II - Garnishment Worksheet

You may complete Section II of the First Answer by hand or attach a worksheet that shows the applicable calculations. Be sure your attachment identifies the plaintiff, defendant, and garnishee (agency) as well as the correct court and court cause number.

² *Anderson v. Anderson*, 285 Md. 515, 525, 404 A.2d 275, 280 (1979) (between state and federal statute, the statute that protects the greater amount of a debtor's earnings controls).

9. Section II - Mail Completed First Answer

Mail the completed First Answer form and any attached worksheets to the court, creditor and employee in the self-addressed stamped envelopes provided by the creditor. The First Answer form must be mailed as instructed within twenty (20) calendar days of its receipt by the Office of the Attorney General. If the agency fails to mail the First Answer form, the creditor may take a default judgment against the agency, after notice, for the entire amount listed in the judgment.

E. Second Answer

At or near the end of the 60 day period, the creditor (plaintiff) will mail you a Second Answer form. This form tells the creditor (plaintiff) exactly what amounts were deducted from the employee's earnings. Complete the Second Answer form and show your calculations.

1. Calculate Exempt Earnings

Calculate exempt and non-exempt earnings in the same manner as you did in the First Answer. Indicate the actual amounts withheld as non-exempt earnings. A worksheet may be attached to the Second Answer form. Make sure the worksheet properly identifies the plaintiff/defendant, the agency, the court and the court cause number.

2. Processing Fees

The agency may deduct a processing fee of \$10 for the Second Answer. However, the processing fee may be deducted only if non-exempt earnings exist to satisfy the fee.

3. Mail the Second Answer

Send the completed Second Answer form to the court, creditor and employee in the self-addressed stamped envelopes provided by the creditor. The Second Answer form must be mailed to the parties within twenty calendar (20) days of receipt of the forms.

4. Hold All Non-Exempt Funds Pending a Court Order

Now that you have withheld the non-exempt earnings over the prior 60 days, you must continue to hold the funds until you receive a Judgment On Answer and Order to Pay. The law requires that unless the creditor releases you from holding the funds, you must hold the funds up to one year from the date the Second Answer was filed with the court. RCW 6.27.310. Contact the garnishment coordinator at the Office of the Attorney General if you are still holding earnings after one year.

F. Judgment on Answer and Order to Pay

Once the creditor receives the Second Answer, it will request a court order directing the agency to turn over the non-exempt earnings in your possession. The court order will be titled something similar to "Judgment on Answer and Order to Pay." The title references a "judgment" because the order generally provides for a judgment against the agency in the amount of the non-exempt earnings being held as well as a judgment against the employee for the creditor's costs and attorney fees associated with the writ of garnishment.

Follow the directions in the Judgment when determining where to send the withheld funds. Under a district court writ of garnishment, the non-exempt earnings may be sent to the creditor, the creditor's attorney, or the court. A superior court writ requires that the non-exempt earnings be sent to the court clerk unless otherwise stated in the writ.

G. Failure to Answer or Deliver Funds

1. Failure to Answer

If an agency fails to answer the writ of garnishment, the creditor may hold the agency liable for the **entire** amount of the creditor's unpaid judgment, including costs and interest. RCW 6.27.200. The creditor must give the agency ten calendar days notice of the creditor's intent to request a default. If you receive a notice of default, contact the garnishment coordinator at the Attorney General's Office *immediately*. Often times the default notice can be mitigated by a prompt response or other defenses.

The law also allows reduction of any default judgment to the amount of funds in the possession of the agency. To reduce the judgment, a motion must be filed by an Assistant Attorney General within seven calendar days of the creditor's attempt to garnish the agency. Thus, prompt notice to the Attorney General's Office of any default judgment is essential.

2. Failure to Deliver Funds

If an agency fails to remit funds after it receives a Judgment on Answer and Order to Pay, the court can hold an agency in contempt. RCW 6.27.280. If you receive an Order to Show Cause related to a garnishment, contact the garnishment coordinator at the Attorney General's Office.

III. WRIT OF GARNISHMENT (NON-CONTINUING LIEN)

A writ of garnishment (non-continuing lien) captures personal property in the agency's possession on the day the writ is received by the Office of the Attorney General (AGO). The writ is effective for one day only. It is generally used to capture contract payments owed to a vendor or to a contractor by a state agency.

Because the writ captures personal property payable on the date the writ is received by the AGO, it is essential that the writ be promptly processed. The law prohibits the agency from transferring the property in its possession after receipt of the writ by the AGO. The AGO will make every effort to immediately identify and notify the correct agency. It is incumbent upon the agency, once notified, to withhold all funds in its possession on the date served, up to the amount stated in the writ of garnishment.

With a writ of garnishment (non-continuing lien), the creditor must send a check or money order payable to the agency in the amount of \$20. Generally, this check is processed through the AGO in accordance with its policies regarding the handling of money. However, should such a check cross your desk (after receipt by the AGO), you should assume that the creditor is attempting to seize an asset in the possession of the agency that is not related to an employee's wages. You must promptly determine what assets the agency may be holding on behalf of the defendant and take reasonable steps to stop payment of any funds.

Once the agency determines whether it is in possession of funds owed to the defendant on the day the writ of garnishment (non-continuing lien) was received by the AGO, the agency should complete the Answer form. The Answer must be mailed within 20 calendar days of the day the writ was received by the AGO. Any funds seized by the writ of garnishment (non-continuing lien) should be held until the agency receives a Judgment on Answer and Order to Pay.

The following are possible scenarios in which an agency may receive a non-continuing lien.

Example 1: A Creditor obtains a non-continuing writ of garnishment from a superior court. The Office of the Attorney General receives the writ on March 18th. The Creditor's writ indicates that the defendant, Contractor Bob, owes Creditor \$80,000. The writ identifies your Agency as the garnishee defendant. As of the date of receipt by the Office of the Attorney General, your Agency owes Contractor Bob \$50,000.

Your Agency must not pay Contractor Bob the \$50,000. You must answer the Creditor's writ within 20 calendar days of receipt of the writ by the Attorney General by placing an answer in the mail. Your Agency answer must state that \$50,000 was owed to Contractor Bob on the date the writ was received. After receipt of a Judgment and Order to pay, you must remit the funds to the court.

Example 2: Same facts as in Example 1. However, on March 20th, Contractor Bob submits a request for payment of \$30,000 for additional services he provided. The request is approved by your Agency on March 21st.

The writ served by Creditor does not capture the additional \$30,000 payable to the Contractor Bob. The Creditor's non-continuing writ captures only the payments owed to the Contractor Bob on March 18th. It cannot capture any payment payable to the Contractor Bob after March 18th.

Example 3: Same facts as Example 1 and 2. However, Creditor serves a second non-continuing writ of garnishment on the Office of the Attorney General on March 22nd before the \$30,000 is paid to the Contractor Bob.

Your Agency must not pay the Contractor Bob the additional \$30,000. The \$30,000 was owed to the Contractor Bob on the date the second writ was received by the Attorney General. You must answer the writ and turn over the funds as provided by law.

Example 4: The Creditor serves his non-continuing lien on the Office of the Attorney General on November 2nd. No funds are owed to the Contractor Bob on this date.

Your Agency must answer the writ within 20 calendar days that no funds were owed to the Contractor Bob on the date the writ was received.

IV. OTHER ISSUES RELATED TO WRITS OF GARNISHMENT

A. Termination of Employment - Transfer to Another State Agency

Occasionally an employee will terminate employment with an agency during the 60 day effective period of a writ of garnishment (continuing lien) and begin employment with another state agency. If the garnishee is identified as the "State of Washington" or "State of Washington [name of agency]" transfer the garnishment to the payroll staff at the receiving state agency. If the garnishee is listed as your agency only, do not transfer the garnishment. Because your agency is specifically identified as the garnishee, the writ only captures earnings paid by your agency.

B. Satisfaction of Writ

If the creditor's judgment is paid in full prior to your receipt of a Judgment on Answer and Order to Pay, the creditor should file either a "Satisfaction of Judgment" or a "Release of Judgment." A satisfaction of judgment is merely a statement filed with the court (with a copy to the agency) that the judgment has been paid in full. A satisfaction can be "in full" or "partial." A satisfaction in full indicates that the judgment has been paid in full. A partial satisfaction provides that only part of the debt has been paid. Upon receipt of a satisfaction of judgment, the agency should release any earnings held back to the employee as indicated by the creditor.

C. Release of Writ

A release of a writ of garnishment is similar to a satisfaction. A release can be either a court order or a statement from the creditor's attorney that the creditor is releasing its interest in funds held by the agency. If you receive a release, return all funds to the employee or contractor as indicated in the release.

D. Dismissal of Writ

Another option for the creditor to release its interest in funds is to dismiss the writ of garnishment. If you receive an order dismissing the garnishment, before receipt of a Judgment and Order to Pay, return all funds you are holding to the employee.

E. Controversion of the Answer

If a creditor or employee disagrees with the First or Second Answer filed by the agency, it can dispute the answer by filing a "Controversion of Answer" with the court and by serving a copy of the controversion on the agency. RCW 6.27.210. A creditor would use a controversion to dispute how you calculated non-exempt earnings or to dispute the earnings subject to garnishment. If you receive a Controversion of Answer, contact the AGO garnishment coordinator immediately. An answer to the controversion must be filed with the court within 20 calendar days of receiving the controversion. RCW 6.27.220.

F. How to Answer Employee Questions

Often times an employee will complain that they did not receive notice of a judgment or garnishment. They will also complain about the amount being garnished or the fees charged by the creditor. It is not the role of payroll staff to give an employee legal advice. Advise the employee to obtain the services of an attorney. The employee has certain rights that must be exercised in a specified timeframe. It is the employees' responsibility to consult an attorney or the appropriate statutes to determine their rights. Attorney advice is often available through a county bar association's legal clinic, county pro bono services, Columbia Legal Services or the Northwest Justice Project.

V. CHILD SUPPORT

Child support can be collected through payroll deduction notices, wage assignments, writs of garnishment or a notice to withhold and deliver. Each document implicates different rules and agency responsibilities. First,

identify the type of legal document used to collect the child support. Next, refer to the general rules outlined below related to the type of legal document. Always follow the instructions contained in the legal document.

A. Payroll Deduction Notice

The Department of Social and Health Services' Child Support Division may issue a payroll deduction notice to collect child support. RCW 26.23.060.

1. Service of the Payroll Deduction Notice

The payroll notice may be served directly on the agency. It does not need to be served on the Office of the Attorney General.

2. Effective Upon Receipt

The payroll deduction notice captures the employee's non-exempt earnings upon receipt of the notice by the agency. RCW 26.23.060(3).

3. Deductions Continue Until Terminated

A payroll deduction continues to capture the employee's non-exempt earnings until released by the Division of Child Support, released by a court order, or the employee terminates employment *and* the agency no longer possesses any earnings. RCW 26.23.060(10).

4. Captures Up to Fifty Percent of Disposable Earnings

The payroll notice may capture up to 50% of the employee's disposable income. RCW 26.23.060(3). Disposable income is calculated in the same manner as a writ of garnishment. The agency must remit any funds deducted from the employee's earnings within seven calendar days of the date the earnings are payable. RCW 26.23.060(7).

Federal work study grants from the U.S. Department of Education are exempt from child support withholding. 20 USC1095a(d). State work study monies, however, are not exempt from child support withholding.

5. Priority

A payroll deduction notice for child support has priority over all other garnishments, attachments, or legal process, except another child support levy or garnishment. RCW 26.23.060(4). Upon receipt of a payroll deduction notice, the agency should stop all non-child support garnishments and begin deducting earnings under the payroll notice.

If the payroll notice levies less than 25% of the employee's disposable earnings, then deduct amounts due under any non-child support garnishment, administrative order, or wage assignment up to the amount allowed by law. Refer to the discussion regarding Competing Garnishments, Administrative Orders and Assignments.

6. Answer

The answer to the payroll notice must be mailed to the Division of Child Support within 20 calendar days of receiving the payroll notice. RCW 26.23.060(8). Complete the answer as instructed.

7. Processing Fee

An agency may collect a \$10 processing fee for the first disbursement and a \$1 processing fee for each subsequent disbursement. RCW 26.23.060(9). Unlike a writ of garnishment, there is no restriction on when to take the fee.

B. Notice and Order to Withhold and Deliver

The Department of Social and Health Services may issue an administrative order directing the agency to withhold earnings or other property for a child support debt. RCW 74.20A.080(1).

1. Service of the Notice and Order

The notice and order to withhold and deliver may be served directly on the agency by either regular or certified mail return receipt. RCW 74.20A.080(2)(d)(ii), (iv). Although the order may be served on the Office of the Attorney General, it is not required.

2. Effective Upon Receipt

The order captures the employee's non-exempt earnings upon receipt of the order by the agency. RCW 74.20A.080(6)(a)(i).

3. Deductions Continue Until Terminated

An order to withhold and deliver continues to capture the employee's non-exempt earnings until released in writing by the Division of Child Support, released by a court order, the employee terminates employment, or the agency no longer possesses any earnings. RCW 74.20A.080(7).

4. Captures Up to Fifty Percent of Disposable Earnings

The order may capture up to 50% of the employee's disposable income. RCW 74.20A.090. Disposable income is calculated in the same manner as a writ of garnishment. The agency must remit any funds deducted from the employee's earnings within seven calendar days of the date the earnings are payable. RCW 74.20A.080(6)(a)(ii).

Federal work study grants from the U.S. Department of Education are exempt from child support withholding. 20 USC1095a(d). State work study monies, however, are not exempt from child support withholding.

5. Priority

A order and notice to deliver for child support has priority over all other garnishments, attachments or legal process, except another child support levy or garnishment. RCW 74.20A.080(14). Upon

receipt of an order, the agency should stop all non-child support garnishments and begin deducting earnings under the order. If the order requests a deduction of less than 25%, refer to the Competing Garnishments, Administrative Orders and Wage Assignments section of this outline.

6. Answer

The answer to the order must be mailed to the Division of Child Support within 20 calendar days of receiving the order. RCW 74.20A.080(4)(a). The answer must be made in writing and under oath. Complete the answer as instructed.

7. Processing Fee

An agency may collect a \$10 processing fee for the first disbursement and a \$1 processing fee for each subsequent disbursement. RCW 74.20A.080(15). Unlike a writ of garnishment, there is no restriction on when to take the fee.

C. Mandatory Wage Assignment Order for Child Support

Both the Department of Social and Health Services or a private party may have a court issue a mandatory wage assignment directing the agency to withhold earnings or other property for a child support or spousal maintenance debt. RCW 26.18.070, et seq.

1. Service of the Wage Assignment Order

The mandatory wage assignment may be served directly on the agency either in person or by certified mail return receipt. RCW 26.18.130. Although the order may be served on the Office of the Attorney General, it is not required.

A wage assignment is not valid unless it is served with five answer forms together with stamped envelopes addressed to the clerk of

court, the support registry, the debtor's attorney, or the debtor, and the creditor. RCW 26.18.130.

2. Effective Upon Receipt

The assignment captures the employee's non-exempt earnings upon receipt of the assignment by the agency. RCW 26.18.110.

3. Deductions Continue Until Terminated

An assignment continues to capture the employee's non-exempt earnings until released in writing, released by a court order or until the employee terminates employment or the agency no longer possesses any earnings. RCW 26.18.110(3).

4. Captures Up to Fifty Percent of Disposable Earnings

The assignment may capture up to 50% of the employee's disposable income. RCW 74.20A.090. Disposable income is calculated in the same manner as a writ of garnishment. The agency must remit any funds deducted from the employee's earnings within *five working days* of each regular pay interval. RCW 26.18.110(2).

Federal work study grants from the U.S. Department of Education are exempt from child support withholding. 20 USC1095a(d). State work study monies, however, are not exempt from child support withholding.

5. Priority

A wage assignment for child support has priority over all other garnishments, attachments or legal process, except another child support administrative notice or order issued under RCW 74.20A. RCW 26.18.110(5).

A wage assignment for spousal maintenance under chapter 26.18 RCW has priority over any other wage assignment or garnishment, except a

wage assignment, garnishment or administrative order for child support. A wage assignment for spousal maintenance competes with another assignment for spousal maintenance on a first-in-time, first-in-right basis. RCW 26.18.110(5).

Upon receipt of an order, the agency should stop all non-child support garnishments and begin deducting earnings under the order. If the agency seeks to levy less than 25% of the employee's disposable wages, refer to the Competing Garnishments, Administrative Orders and Assignment section of this outline.

6. Answer

The answer to the order must be mailed to the Division of Child Support within 20 calendar days of receiving the order. RCW 26.18.110(1). Complete the answer as instructed.

7. Processing Fee

An agency may collect a \$10 processing fee for the first disbursement and a \$1 processing fee for each subsequent disbursement. RCW 26.18.110(4). Unlike a writ of garnishment, there is no restriction on when to take the fee.

8. Notification Requirements

An agency must notify the addressee specified in the assignment when the employee is no longer employed. RCW 26.18.110(3)(b).

9. Assignment Remains In Effect After Termination of Employment

The wage assignment remains in effect for one year after the employee leaves employment or one year after the agency has been in possession of any earnings owed to the employee, whichever is later. RCW 26.18.110(3)(b). The agency must hold the wage assignment for this one year period. If the employee returns to the agency's

employment during the one year period, the agency must immediately withhold earnings as provided in the prior wage assignment. If the employee does not return to work for the agency within the one year period, the wage assignment expires unless the agency is still holding funds for the former employee.

D. Writ of Garnishment for Child Support

In addition to the other collection remedies, a private party may garnish the wages of an employee to collect child support using a writ of garnishment (continuing lien) or writ of garnishment (non-continuing lien) under RCW 6.27. A writ under RCW 6.27 for child support may capture up to 60% of the employee's disposable earnings. It has priority over any other non-child support wage assignment, garnishment or administrative order.

Refer to the section discussing writs of garnishment for further instructions.

E. Out-of-State Support Orders

Both federal and state law required employers, including state agencies, to honor child support orders issued by out-of-state entities. RCW 26.21A.405 et seq. If you receive an out-of-state support order, follow the instructions in the order. If you have any questions, contact the garnishment coordinator at the Attorney General's Office.

VI. COMPETING GARNISHMENTS, ADMINISTRATIVE ORDERS AND WAGE ASSIGNMENTS

A. Competing Child Support Orders

If you receive two or more child support orders from different entities, i.e., State of Washington and a private party, or State of Washington and out-

of-state order, call the assigned Washington State child support officer for advice on prioritization.

B. Priority of Competing Legal Documents

Although child support orders take precedence over other non-child support garnishments, administrative orders, and wage assignments, if the child support notice deducts less than 25% of disposable wages, any remaining earnings may be paid over to the creditor next in priority if allowed by law. This rule applies equally to any other type of garnishment, administrative order, or wage assignment that captures less than 25% of the employee's disposable wages.

Example 1: Agency receives a properly served writ of garnishment (continuing lien) for \$1,000. The agency begins deducting 25% of disposable earnings. Agency then receives a child support notice that requests 15% of the employee's disposable earnings.

The agency should immediately deduct 15% of the employee's disposable earnings under the child support notice. It may then deduct an additional 10% of disposable earnings under the writ of garnishment for the 60 calendar day effective period. The earnings deducted under the writ of garnishment are held until the agency receives a Judgment on Answer and Order to Pay.

Example 2: The agency receives an educational loan notice for 10% of the employee's disposable earnings. It later receives a child support levy for 5% of the employee's disposable earnings. Later yet, it receives a writ of garnishment (continuing lien) seeking 25% of disposable earnings.

Agency should begin deducting 10% under the educational loan notice. Once the child support levy is received, it takes precedence over the educational loan. Because the child support levy is less than 25% of the employee's disposable wages, the agency may deduct 5% for the child support levy and 10% for the educational loan notice. The remaining 10% of disposable wages is available to satisfy the writ of garnishment (continuing lien).

Example 3: Agency is withholding 25% of disposable earnings under a writ of garnishment (continuing lien). The agency receives a child support levy for 50% of the employee's disposable earnings.

The agency should stop immediately stop withholding under the writ of garnishment (continuing lien). It should begin with withholding under the child support levy. No non-exempt funds are available to satisfy the writ of garnishment.

VII. ADMINISTRATIVE ORDERS

A. Educational Loans

Any student loan guaranteed by the federal government may be collected with an administrative order issued by the federal government, a state agency or a quasi-governmental collection agency. *See* 20 U.S.C. § 1095A *et. seq.* The administrative order is generally titled "Order for Withholding of Employee Wages for Debt Owed to US. Government."

1. Service of Order

The order may be served on the agency by mail. Although the order may be served on the Office of the Attorney General, it is not required.

2. Effective Upon Receipt

The order captures 15% of the employee's disposable earnings upon receipt of the order by the agency. 31 U.S.C. § 3720D

3. Deductions Continue Until Terminated

The order continues to capture the employee's disposable earnings until paid in full, released in writing, or the employee terminates their employment.

4. Captures Fifteen Percent of Disposable Earnings

Upon receipt of the order, the agency must withhold the lesser of either (a) 15% of the employee's disposable wages earned during each pay period *or* (b) the amount, if any, by which the employee's disposable wages for each work week in a pay period exceeds thirty times the current federal hourly minimum wage. 28 U.S.C. § 1095(a)(1). A greater percentage, however, may be deducted from the employee's wages if the employee consents in writing to the deduction.

Disposable wages for education debts are calculated in the same manner as for a writ of garnishment

5. Priority

An educational loan order competes on a first-in-time, first-in-right basis with other garnishments, levies and administrative orders. Child support will always take priority over an educational loan order.

6. Answer

An answer to an educational loan order is requested, but not required by law. The entity serving the order will generally provide the state agency with an "Employer Acknowledgement of Withholding." The order requests that this acknowledgement be returned to the collecting entity within 30 days of receipt of the order.

7. Processing Fee

No processing fee may be deducted, since none is allowed by law.

8. Re-employment of Former Employee Within 12 Months

If an individual is reemployed by an agency within 12 months of being involuntarily terminated, no amount may be deducted from the

employee's disposable wages until the individual has been reemployed continuously for at least 12 months. 20 U.S.C. § 1095a(7).

B. IRS Notice of Levy

An IRS Notice of Levy is not subject to the same restrictions as a writ of garnishment. Taxes are exempt from the federal Consumer Credit Protection Act, which limits the amount a creditor may garnish. Follow the instructions in the Notice of Levy and direct any questions to the IRS service representative issuing the levy.

1. Service of the Notice of Levy

The Notice of Tax Levy may be served directly on the agency.

2. Effective Upon Receipt

The levy captures the employee's non-exempt earnings upon receipt of the Notice of Levy by the agency.

3. Deductions Continue Until Terminated

A Notice of Levy continues to capture the employee's non-exempt earnings until released in writing by the IRS.

4. Remit Funds to IRS

Non-exempt earnings must be remitted to the IRS on the same date that the employee is paid unless otherwise specified. Checks should be made payable to the "United States Treasury." The IRS requests that the check include the taxpayer's name, identifying number(s), the kind of tax, the tax periods shown on Part I of the Notice of Levy and the words "LEVY PROCEEDS." Attach the check to Part 3 of the Notice of Levy form.

5. Captures Non-Exempt Earnings

The levy captures non-exempt income of an employee. You must give the employee the Statement of Exemptions and Filing Status that the IRS will send you. This form identifies the earnings that the employee claims are exempt from levy. The employee must complete the form(s) and return it to you in three working days after you received the levy.

After the employee completes the exemption form, calculate the exempt amount by following the enclosed instructions. Next, calculate the employee's 'take home pay.' To determine 'take home pay,' subtract from gross earnings all payroll deductions being taken on the date you received the tax levy. Send the IRS the employee's take home pay minus any exempt amounts. (Note that direct deposit is not considered a payroll deduction.)

6. Priority

An IRS lien competes on a first-in-time, first-right basis with all other garnishments, levies or mandatory wage assignments except for child support. A child support collection action has priority over IRS action because child support owed pursuant to a support order entered prior to the IRS levy is exempt from IRS collection. I.R.C. §6334(a)(8). If the IRS and a state tax agency dispute the priority of their respective liens, contact the Office of the Attorney General, Bankruptcy & Collections Unit for assistance at (206) 389-2187. If you receive a child support order after you receive an IRS levy, notify the DSHS Support Enforcement Officer listed on the order.

7. Answer

If the taxpayer is not your employee, complete the back of Part 3 of the form and return all forms to the IRS in the envelope provided.

If the taxpayer is your employee, follow the instructions provided with the levy. Because laws change frequently, always follow the

instructions in the Notice of Levy should this manual differ from the Levy's instructions.

8. Processing Fee

Do not collect a processing fee unless so instructed in the levy.

C. Notice and Order to Withhold and Deliver by State Tax Agency

As noted, the collection of taxes is not subject to the restrictions imposed on a writ of garnishment. 15 U.S.C. § 1673(b)(1)(C). A tax order can collect up to 100% of the employee's disposable earnings.

1. Service of the Notice and Order to Withhold and Deliver

The Notice and Order to Withhold and Deliver (NOWD) may be served directly on the agency without service on the Office of the Attorney General.

2. Effective Upon Receipt

The NOWD captures the employee's disposable earnings upon receipt of the Notice by the agency.

3. Deductions Continue Until Terminated

A NOWD continues to capture the employee's earnings until released in writing by the taxing agency or paid in full.

4. Remit Funds to Taxing Agency

Remit funds as instructed in the NOWD.

5. Captures Earnings

The NOWD may capture 100% of the employee's earnings. However, a taxing agency can also request payment of a lesser amount. Follow the instructions in the NOWD. If the NOWD requests 25% of the employee's disposable earnings, use the calculation method for a writ of garnishment (continuing lien) to determine the exempt and non-exempt amounts.

6. Priority

A NOWD competes on a first-in-time, first-right basis with all other garnishments, levies, or mandatory wage assignments except for child support. Child support will always take precedence over a NOWD. If the IRS and a state tax agency dispute the priority of their respective liens, contact the Office of the Attorney General, Bankruptcy & Collections Unit for assistance at (206) 389-2187.

7. Answer

Follow the instructions in the respective NOWD.

8. Processing Fee

Collect a processing fee if so instructed in the NOWD. There is no restriction on when you can take a processing fee.

VIII. WAGE ASSIGNMENTS

There are generally two types of wage assignments - voluntary wage assignments and mandatory wage assignments. A voluntary wage assignment is an employee's (assignor) written consent to transfer future wages to a third party (assignee). A mandatory wage assignment is a similar transfer of earnings required by law or court order. The amount deducted under the wage assignment can exceed the 25% limit of a writ of garnishment.

A. Voluntary Wage Assignments

An agency may accept or decline to honor a voluntary wage assignment. Before accepting a voluntary wage assignment, an agency should notify the employee and creditor in writing that the agency agrees to withhold under the assignment only on the condition that the agency is not liable for mistakes or omissions in honoring the assignment. The agency should also carefully review the terms of the assignment to be sure that it can withhold money as directed by the assignment.

Before honoring such an assignment, the agency should obtain a copy of the assignment signed by the employee. If the employee is married, written consent to the assignment by the employee's spouse is necessary for non-child support debts. RCW 49.48.100.

A non-child support or voluntary spousal support wage assignment can co-exist with other garnishments, administrative orders and assignments. This is because the amount withheld under a voluntary wage assignment can exceed 25% of the employee's disposable earnings. Refer to the instructions under the Child Support section of this outline for the priority of competing child support and spousal maintenance assignments. Continue to withhold earnings under the assignment until the debt is paid in full, released in writing or otherwise instructed in the assignment.

B. Mandatory Wage Assignments

A mandatory wage assignment, on the other hand, most often requires the transfer of earnings based upon a court order or agency directive. The legislature provided for the mandatory assignment of wages for child support, criminal financial obligations and public assistance overpayments. A mandatory wage assignment should be processed in accordance with the terms of the assignment or court order.

IX. BANKRUPTCY

A bankruptcy is a legal action initiated to prevent collection activity by a creditor. There are two types of bankruptcies generally filed by an

employee: (1) a Chapter 7; and (2) a Chapter 13. Each type of bankruptcy is subject to the automatic stay. Each bankruptcy, however, has different implications for a state agency.

C. Automatic Stay - Generally

The filing of a bankruptcy petition by an employee in a U.S. Bankruptcy Court prevents a creditor from continuing to collect a debt. The filing of the bankruptcy petition creates an "automatic stay." The automatic stay prevents the collection of a debt by the creditor. It is automatic because it occurs as a matter of law when the employee files their bankruptcy forms (called the bankruptcy petition) with the court.

D. What to Do

If an employee tells you that s/he has filed a bankruptcy, request written confirmation that the bankruptcy was filed. This could include:

- a letter from their attorney with the bankruptcy court cause number,
- a copy of the first page of the bankruptcy petition, or
- a copy of a bankruptcy filing receipt with the court's cause number.

If you are not provided with written confirmation, contact the garnishment coordinator at the Attorney General's Office to verify the existence of the bankruptcy case.

Next, stop deducting earnings under a non-child support garnishment, administrative order or wage assignment immediately. If the garnishment, administrative order or wage assignment is related to child support, do not stop deducting earnings unless instructed otherwise by the court. Child support generally is not subject to the bankruptcy automatic stay.

If you are holding previously garnished funds, send the creditor a letter seeking further instruction. A sample form letter is contained the Appendix. Some creditor attorneys contend that the earnings held by the agency must be turned over to the creditor at a later date. Other attorneys

contend that the earnings should be returned to the employee. The law is not clear.

If the creditor requests that you hold the funds, hold the funds for one year. If the creditor does not serve a Judgment on Answer and Order to Pay within that one year period, contact the garnishment coordinator at the Office of the Attorney General for further assistance.

If the creditor does not respond to your written request for instruction within the time frame specified in the letter, return the funds to the employee.

E. Chapter 7

A Chapter 7 bankruptcy refers to chapter 7 of the United State Code, which governs the filing of this type of bankruptcy. A Chapter 7 is a particular type of bankruptcy in which the employee (debtor) seeks to eliminate all obligations to repay their debts. The bankruptcy court refers to the act of eliminating the debt as a "discharge." A Chapter 7 results in the discharge of most debts. Some debts, however, are not discharged under fact specific circumstances. Child support and taxes fall into this latter category.

When an employee files a Chapter 7, the automatic stay goes immediately into effect. It continues until the court enters a "Discharge Order." After the discharge order is entered, the automatic stay ceases to exist. Although the automatic stay is no longer in effect, the discharge order imposes a permanent injunction that prevents a pre-petition creditor from collecting their debt.

A creditor who obtains a judgment after the discharge order was entered, however, is not subject to the permanent injunction. The discharge order only affects debts incurred before the employee filed their bankruptcy petition.

If, on the other hand, you receive notice that a bankruptcy was dismissed, reinstate the garnishment, administrative order, or assignment as provided

by law. If the 60 day effective period of a writ of garnishment (continuing lien) expired, you cannot, however, reinstate the writ. Refer any questions to the AGO garnishment coordinator.

F. Chapter 13

Like a Chapter 7 bankruptcy, a Chapter 13 bankruptcy refers to chapter 13 of the United States Code. In a Chapter 13 bankruptcy, the employee (debtor) will attempt to pay all or a portion of their debt over a period of time, usually a three to five year period. In a Chapter 13, the employee pays over to the Chapter 13 Trustee a fixed amount of earnings. The Chapter 13 Trustee distributes these earnings to the employee's creditors. If the employee is successful in making all required payments to the Chapter 13 Trustee, the employee will receive a discharge of all unpaid debts.

Like a Chapter 7, you must stop the deduction of earnings for any garnishment, administrative order, or assignment with the exception of child support. Again, if you are holding earnings collected before the bankruptcy was filed, inform the creditor that the employee has filed a bankruptcy and that any pre-bankruptcy earnings will be returned unless the creditor instructs otherwise. A sample form letter is contained in the Appendix. Earnings inadvertently deducted after the bankruptcy filing date are always returned immediately to the employee with the exception of child support deductions.

Because the employee is attempting to repay his/her creditors, you will receive a document titled "Direction to Withhold and Pay Trustee" from the Chapter 13 Trustee. The Direction will instruct you on how much and how often you should deduct earnings. Chapter 13 deductions will continue until released by an order of the court or notice from the Chapter 13 Trustee.

Chapter 13 deductions are not subject to any exemptions and, thus, may exceed the 25% limit of a writ of garnishment (continuing lien). 15 U.S.C. § 1673(b)(1)(B). Once deducted, remit the earnings to the Chapter 13 Trustee.

If you receive a writ of garnishment while you are deducting under a Chapter 13 Direction to Withhold, contact the AGO garnishment coordinator for further instructions.

The location of each Washington Chapter 13 Bankruptcy Office is as follows:

K. Michael Fitzgerald (send correspondence)
Chapter 13 Trustee
2200 One Union Square
600 University Street
Seattle, WA 98101-4100
Phone: (206) 624-5124
Fax: (206) 624-5282
kmfitzgerald@seattlech13.com

K. Michael Fitzgerald (send payments)
Chapter 13 Trustee
P.O. Box 2139
Memphis, TN 38101-2139

David M. Howe (send correspondence)
Chapter 13 Trustee
1551 Broadway - Suite 600
Tacoma, WA 98402
Phone: (253) 572-6600
Fax: (253) 627-2978
ch13tacoma@qwest.net

David M. Howe (send payments)
Chapter 13 Trustee
P.O. Box 120
Memphis, TN 38101-0120

Karla Forsythe (send correspondence & payments)
Chapter 13 Trustee
1330 Esther Street - Suite 206
Vancouver, WA 98660
Phone: (360) 993-4400
Fax: (360) 993-4659
precon@ch13vanc.com

Daniel H. Brunner (send correspondence)
Chapter 13 Trustee
P.O. Box 1513
Spokane, WA 99201
Phone: (509) 747-8481
Fax: (509) 623-2126
ch13trustee@spokane13.org

Daniel H. Brunner (send payments)
Chapter 13 Trustee
P.O. Box 1003
Memphis, TN 38101-1003